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Filing date: **08/13/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218738
Party	Plaintiff Abercrombie & Fitch Trading Co.
Correspondence Address	SUSAN M KAYSER JONES DAY 51 LOUISIANA AVENUE NW WASHINGTON, DC 20001-2113 UNITED STATES ipdocketingwest@abercrombie.com, skayser@jonesday.com, jbradley@jonesday.com, nytéf@jonesday.com
Submission	Motion to Extend
Filer's Name	Jessica D. Bradley
Filer's e-mail	jbradley@jonesday.com, skayser@jonesday.com, nytéf@jonesday.com, kbaird@jonesday.com
Signature	/Jessica D. Bradley/
Date	08/13/2015
Attachments	A&F Motion for Extension.pdf(543130 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

ABERCROMBIE AND FITCH TRADING CO.,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91218738
	§	
SCHNITTGER, ISABELLA ELISABETH	§	
	§	
Applicant.	§	
	§	

Opposer’s Motion For An Extension Of Trial Deadlines Without Consent

Pursuant to 37 C.F.R. § 2.121(a) Opposer, Abercrombie and Fitch Trading Co., (“A&F” or “Opposer”), respectfully moves for a brief thirty day extension of time of the trial period deadlines to allow Opposer sufficient time to complete and file its trial testimony and evidence. In support of this motion, Opposer states as follows:

1. The parties completed discovery by the June 15, 2015 deadline in the Board’s scheduling order. (Bradley Decl. ¶ 2.)
2. Opposer has met all prior deadlines in this opposition. (Bradley Decl. ¶ 3.)
3. Since the completion of discovery, Opposer has been diligent in preparing for its trial period including communicating with Applicant since June 25, 2015 regarding a potential stipulation to an alternate means of presentation of testimony and evidence. However, the parties have been unable to reach an agreement. (Bradley Decl. ¶ 4, Exhibits A-B.)
4. On July 30, 2015, Opposer served its pretrial disclosures. (Bradley Decl. ¶ 5.)
5. Opposer’s testimony period is set to open on August 15, 2015, and to close on September 13, 2015. Opposer requires a brief additional 30 days to allow it sufficient time to

complete and file its testimony and evidence, including a conference with all of the parties and the Interlocutory Attorney to discuss trial procedures. (Bradley Decl. ¶ 6.)

6. This is Opposer's first extension request in this case. (Bradley Decl. ¶ 7.)

7. On August 11, 2015, Opposer requested Applicant's consent to this extension request. On August 12, 2015, Applicant indicated that she did not agree to the extension request. (Bradley Decl. ¶ 8, Exhibit C.)

"The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause." *American Vitamin Productsnext hit Inc. v. DowBrands Inc.*, 22 U.S.P.Q.2d 1313, 1314 (TTAB 1992); Fed.R.Civ.P. 6(b)(1)(A). "[T]he Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." *American Vitamin*, 22 U.S.P.Q.2d at 1314. Additionally, an "opposer has not abused the privilege of extensions [where] this is opposer's first request for an extension." *Nautica Apparel, Inc. v. Crain*, Opposition No. 113,893, 2000 TTAB LEXIS 452, *3-*4 (TTAB. July 21, 2000). Here, Opposer has moved for an extension prior to the close of its testimony period, has diligently met all prior deadlines in this case, and this is Opposer's first extension request.

Opposer requests that the new trial periods be set to run from the date of the Board's decision on the motion, but also lists below new deadlines calculated thirty days from the deadlines in the Board's current scheduling order to the extent this is helpful:

Plaintiff's 30-day Trial Period Ends	9/13/2015
Defendant's Pretrial Disclosures	9/28/2015
Defendant's 30-day Trial Period Ends	11/12/2015
Plaintiff's Rebuttal Disclosures	11/27/2015

Plaintiff's 15-day Rebuttal Period Ends	12/27/2015
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Dated: August 13, 2015

Respectfully submitted,

By: /Jessica D. Bradley/

Susan M. Kayser

Jessica D. Bradley

JONES DAY

51 Louisiana Avenue, NW

Washington, DC 20001

(202) 879-3939

skayser@jonesday.com

jbradley@jonesday.com

Attorneys for Opposer

Abercrombie and Fitch Trading Co.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposer's Motion For An Extension Of Trial Deadlines Without Consent and the supporting Declaration of Jessica D. Bradley has been served on Applicant, Isabella Elisabeth Schnittger, on August 13, 2015, via email at isartdesign7@aol.com and myreddear@aol.com pursuant to the agreement of the parties.

/Jessica D. Bradley/

Jessica D. Bradley

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

ABERCROMBIE AND FITCH TRADING CO.,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91218738
	§	
SCHNITTGER, ISABELLA ELISABETH	§	
	§	
Applicant.	§	
	§	

**Declaration of Jessica D. Bradley in Support of
Opposer's Motion For An Extension Of Trial Deadlines Without Consent**

I, Jessica D. Bradley, declare and state as follows:

1. I am a partner in the law firm of Jones Day, counsel for Opposer, Abercrombie & Fitch Trading Co. ("Opposer" or "A&F"). I make this declaration in support of Opposer's Motion For An Extension Of Trial Deadlines Without Consent. The following facts are within my knowledge and, if called and sworn as a witness, I could and would testify competently thereto. The matters referred to in this declaration are based upon my personal knowledge, and/or when referencing documents, such documents were reviewed by me and where applicable, were obtained and compiled at my instruction by other attorneys employed by Jones Day, and if called as a witness I could and would testify competently thereto.

2. A&F and Ms. Schnittger completed discovery by the June 15, 2015 deadline in the Board's scheduling order.

3. A&F has met all prior deadlines in this opposition.

4. Since the completion of discovery, A&F has been diligent in preparing for its trial period including communicating with Ms. Schnittger since June 25, 2015 regarding a potential

stipulation to an alternate means of presentation of testimony and evidence. However, the parties have been unable to reach an agreement. Attached hereto as Exhibits A – C are true and correct copies of e-mails between me and Ms. Schnittger regarding presentation of testimony and evidence.

5. On July 30, 2015, A&F served its pretrial disclosures.

6. A&F's testimony period is set to open on August 15, 2015, and to close on September 13, 2015. A&F requires a brief additional 30 days to allow it sufficient time to complete and file its testimony and evidence, including a conference with all of the parties and the Interlocutory Attorney to discuss trial procedures.

7. This is A&F's first extension request in this case.

8. On August 11, 2015, A&F requested Ms. Schnittger's consent to this extension request. On August 12, 2015, Ms. Schnittger indicated that she did not agree to the extension request. *See* Exhibits B and C.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on August 13, 2015.

/Jessica D. Bradley/
Jessica D. Bradley

EXHIBIT A



Re: A&F opposition adv. Ms. Schnittger - A&F's Proposal to use Accelerated Case Resolution

Isabella Schnittger

to:

jbradley

06/26/2015 09:00 AM

Hide Details

From: Isabella Schnittger <isartdesign7@aol.com>

To: jbradley@JonesDay.com,

History: This message has been forwarded.

Good Morning

Ms. Jessica Bradley

I know the Moose Creek is a case, but for me a evidence to show the difference between a Moose and a Deer, because the Ninth Cir. described it very clear. I do not why we should speed up your opposition against my application without the another deadlines. I think I have more time to response and to find something what is helpful for me in this case. Here is very clear the time who works for me. In the past it shows me very clear what kind for way do you want to go in this case. I think it is not fair from you to say I would inevitably capitalize upon the fame and distinctiveness of opposers's moose design. This is very clear a allegation and not subjective. When

I had my idea with my Red Dear. I never thought about A&F, because I try to find a symbol who can represent a group in the society. **This was the Middle Class.** How can A&F think about that I tried to make a copy from A&F's distinctiveness? This is a Company for young good looking people in the last 13 years. Do you think most of the young good looking people think about what it is, to be privileged to live this live style without regress be selfish and spoiled. Believe me that is not my target group. This group will never support the Middle Class because the Middle Class are hard working people without a lot salary when is payday. But this people support the society in United States. My target group will appreciate the products made in the USA because they are very lucky to have a work where they can support her or his family. All of them love the simple live style ,they cares about the other and they are proud to be a part the society because they think they can chance the world in a better world. They are dreamers , they are believers . Do you think in a society where you have only selfish and spoiled people they have many ideas? Why should they to have ideas? They won't support anyone ... The world chanced trough good ideas. Maybe A & F has to think about this in the future. A & F has to stand up for something.... A & F has to be a example for this young people. Everything in this world is impermanent like the youth, beauty , success, richness etc. Believe me I had not a target when I filed out a application for my Red Dear. Now I got a situation what I never expect it. I only had a idea to make the world a little bit better. I am a believer and I never give it up.

My feel says I have to go through the whole process without change the deadlines because my feel says clear only you will have the profit.

Regards

Isabella Schnittger

-----Ursprüngliche Mitteilung-----

Von: Jessica D Bradley <jbradley@JonesDay.com>

An: Isabella Schnittger <isartdesign7@aol.com>

Cc: Susan M Kayser <skayser@jonesday.com>; Holly Lance <hlance@jonesday.com>

Verschickt: Do, 25 Jun 2015 11:37 pm

Betreff: Re: A&F opposition adv. Ms. Schnittger - A&F's Proposal to use Accelerated Case Resolution

Dear Ms. Schnittger:

The Moose Creek document you are referring to is a case and not evidence and you would be free to use that document in ACR. The terms we put in our e-mail were not final. They were proposed terms and we were asking if you wanted to discuss what we actually would agree to with the Board attorney. We are willing to consider any terms you would like to propose.

We think it may be helpful to have a call with the TTAB attorney Ms. Winters to learn more about the ACR process and what options we have for using it. Ms. Winters works for the U.S. Patent and Trademark office and not A&F.

If you think it would be helpful to have this call with Ms. Winters before making a decision, please let us know what days and times would work for you.

Regards,

Jessica

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

From: Isabella Schnittger [isartdesign7@aol.com]
Sent: 06/25/2015 10:25 PM AST
To: Jessica Bradley
Subject: Re: A&F opposition adv. Ms. Schnittger - A&F's Proposal to use Accelerated Case Resolution

Dear Ms. Jessica Bradley,
I knew it... This is the evidence..... When I have send to you the first response for the Initial Disclosures I did not had this evidence and more... *Note: Abercrombie & Fitch Co' motion for preliminary injunction against Moose Creek, Inc. No. 06-56774, 2007 WL 1469667 (9th Cir.) before the Discovery expired on 06/15/2016

3) The parties may only use documents that were produced during discovery; and Evidence may be submitted by attaching it as exhibits to a declaration or affidavit.

this is the reason that I am not be interested in agreeing to use the Trademark Trial and Appeal Board's Accelerated Case Resolution ("ACR").

Regards
Isabella Schnittger

-----Ursprüngliche Mitteilung-----
Von: Isabella Schnittger <isartdesign7@aol.com>
An: jbradley <jbradley@JonesDay.com>
Verschickt: Do, 25 Jun 2015 8:53 pm
Betreff: Re: A&F opposition adv. Ms. Schnittger - A&F's Proposal to use Accelerated Case Resolution

Dear Ms. Jessica Bradley,
thank you for your eMail and information about ACR procedure. I am not sure what exactly means that for me. You explain it, it would be more efficient and economical but for who? For You ? I do not have so a lot trust in you. You have send me exactly where expired the deadline for the Discovery on 06/15/2015 the First Amended Initial Disclosures where I had not more the possibility to take a response for the Trademark Trial and Appeal Board's. I need time to understand this procedure. But this Proposal comes from you so I have to be careful because when there is an advantage, there can be also a disadvantage. Faster is sometimes not better. I think I have send you enough evidence that my Trademark Application nothing has to do with your Moose Design Mark from Abercrombie & Fitch. My sense says this is not a good deal, because when I think about your First Amended Initial Disclosures more as 2600 pages.... most files there are not required and were confidential. This is A&F's real motiv for his **opposition**:

"As a result of opposer's long and continuous use since at least as early as 2002, and its substantial investment in advertising and promotion, opposer's moose design marks have become famous and well-known ...as a distinctive symbol of opposer's goodwill," the petition said.

"Applicant's use of the [Red Dear] mark will inevitably capitalize upon the fame and distinctiveness of opposer's moose design marks," Abercrombie said. And this is not fair.... in the United States we have democracy, equality, justice and a free market economy for EVERYONE!!!!!!!!!!!!!!!!!!!!!!

Good bless America.

Regards
Isabella Schnittger

-----Ursprüngliche Mitteilung-----

Von: Jessica D Bradley <jbradley@JonesDay.com>

An: isartdesign7 <isartdesign7@aol.com>; myreddear <myreddear@aol.com>

Cc: Susan M Kayser <skayser@jonesday.com>; Holly Lance <hlance@jonesday.com>

Verschickt: Do, 25 Jun 2015 9:38 am

Betreff: A&F opposition adv. Ms. Schnittger - A&F's Proposal to use Accelerated Case Resolution

Dear Ms. Schnittger:

We confirm receipt of the four responses to A&F's First Amended Initial Disclosures that you sent.

Additionally, we would like to see if you would be interested in agreeing to use the Trademark Trial and Appeal Board's Accelerated Case Resolution ("ACR") procedure for the rest of the case. As explained on pages 4-5 of the Board's scheduling order for this case (highlighted copy attached), ACR is a "more efficient and economical means of obtaining the Board's determination of a proceeding." ACR will allow A&F and you to obtain a decision from the Board faster, and eliminates some of the trial period deadlines. We also attach a copy of the Board's Frequently Asked Questions about ACR.

The Board's Interlocutory Attorney assigned to this opposition, Elizabeth Winters can assist us in agreeing to the ACR procedures we will use.

Please let us know if you a) agree to using an ACR procedure for the rest of the case and b) would like to have a telephone conference with A&F and Ms. Winters to agree to the procedures we will use. We are available for a telephone conference with Ms. Winters on July 1, 2, 7, 8, 9 or 10.

A&F is currently proposing that the parties (i.e. A&F and Ms. Schnittger) use the following procedures:

- 1) A&F will file a motion for summary judgment with its evidence, Ms. Schnittger with file a response with her evidence, and A&F will file a response to Ms. Schnittger's evidence;
- 2) The Board may resolve any disputed issues of material fact;
- 3) The parties may only use documents that were produced during discovery; and
- 4) Evidence may be submitted by attaching it as exhibits to a declaration or affidavit.

Regards,

Jessica

Jessica D. Bradley
Partner

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51 Louisiana Avenue, NW

Washington DC 20001-2113

Office +1.202.879.7695

jbradley@jonesday.com

=====

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EXHIBIT B



Re: A&F opposition adv. Ms. Schnittger
 Isabella Schnittger
 to:
 jbradley
 07/13/2015 08:40 PM
 Hide Details
 From: Isabella Schnittger <isartdesign7@aol.com>
 To: jbradley@JonesDay.com,
 History: This message has been forwarded.

Dear Ms. Jessica Bradley,
 please let me time to understand the procedure with the ACR method Summary Judgment Briefs. I will give you a responses as soon as possible.

Regards
 Isabella Schnittger
www.reddear.com

-----Ursprüngliche Mitteilung-----

Von: Jessica D Bradley <jbradley@JonesDay.com>
 An: myreddear <myreddear@aol.com>; isartdesign7 <isartdesign7@aol.com>
 Cc: Susan M Kayser <skayser@jonesday.com>; Holly Lance <hlance@jonesday.com>
 Versickt: Mo, 13 Jul 2015 1:17 pm
 Betreff: A&F opposition adv. Ms. Schnittger

Dear Ms. Schnittger,

We understand that you wish to proceed with the case based on the current trial deadlines in the Board's scheduling order. A&F can agree to that schedule. Accordingly, to keep the current trial testimony schedule, one method of proceeding with trial is ACR Using Summary Judgment Briefs. Attached is an excerpt from the Board manual regarding this method. We could use this method with deadlines similar to those in the Board's scheduling order so that you still have the same amount of time to respond to A&F.

Please let us know if you would like to discuss using this method, or to discuss other trial procedures with us, or the Board attorney Ms. Winters.

Best regards,

Jessica

Jessica D. Bradley
 Partner
[JONES DAY® - One Firm WorldwideSM](http://JONESDAY.com)
 51 Louisiana Avenue, NW
 Washington DC 20001-2113
 Office +1.202.879.7695
jbradley@jonesday.com

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

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EXHIBIT C



Re: A&F opposition adv. Ms. Schnittger
 Isabella Schnittger
 to:
 jbradley
 08/12/2015 11:44 AM
 Hide Details
 From: Isabella Schnittger <isartdesign7@aol.com>
 To: jbradley@JonesDay.com,
 History: This message has been forwarded.

Dear Ms. Jessica Bradley,

I have the information what I got from the United States Patent and Trademark office today that is not necessary to be agree with an extension of the deadlines because you have the opportunity to fill out every time an extension to the Trademark Trial and Apperal Board if you need it without my agreement or approval.

401.01 Discovery Conferences

37 CFR § 2.120(a)(1) ... The provisions of Federal Rule of Civil Procedure relating to ... the conference of the parties to discuss settlement and develop a disclosure and discovery plan, ... are applicable to Board proceedings in modified form ... The Board will specify the deadline for a discovery conference ...

37 CFR § 2.120(a)(2) The discovery conference shall occur no later than the opening of the discovery period, and the parties must discuss the subjects set forth in Federal Rule of Civil Procedure 26(f) and any subjects set forth in the Board's institution order. A Board Interlocutory Attorney or Administrative Trademark Judge will participate in the conference upon request of any party made after answer but no later than ten days prior to the deadline for the conference. The participating attorney or judge may expand or reduce the number or nature of subjects to be discussed in the conference as may be deemed appropriate... The parties are not required to prepare or transmit to the Board a written report outlining their discovery conference discussions, unless the parties have agreed to alter disclosure or discovery obligations set forth by these rules or applicable Federal Rules of Civil Procedure, or unless directed to file such a report by a participating Board Interlocutory Attorney or Administrative Trademark Judge.

***Fed. R. Civ. P. 26(f)(2) Conference Content; Parties' Responsibilities.** ... In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; ... discuss any issues about preserving discoverable information...*

Do we need a discovery conference? because it would change nothing about the facts between A&F Moose Design Mark and the Red Dear Design Mark.

The Red Dear Mark has no one fact of likelihood of confusion with the A&F Trademark.

Kind Regards
 Isabella Schnittger

-----Ursprüngliche Mitteilung-----

Von: Jessica D Bradley <jbradley@JonesDay.com>

An: Isabella Schnittger <isartdesign7@aol.com>

Cc: myreddear <myreddear@aol.com>; Susan M Kayser <skayser@jonesday.com>

Verschickt: Di, 11 Aug 2015 8:07 pm

Betreff: Re: A&F opposition adv. Ms. Schnittger

Dear Ms. Schnittger:

Please let us know:

- 1) if you agree to a 30 day extension of time for all deadlines; and
- 2) since you are not available this week, the times you are available for a call with Ms. Winter next week.

Regards,

Jessica

Jessica D. Bradley
 Partner
[JONES DAY® - One Firm WorldwideSM](http://www.jonesday.com)
 51 Louisiana Avenue, NW
 Washington DC 20001-2113
 Office +1.202.879.7695
jbradley@jonesday.com

From: Isabella Schnittger <isartdesign7@aol.com>
 To: jbradley@JonesDay.com,
 Date: 08/11/2015 07:22 PM
 Subject: Re: A&F opposition adv. Ms. Schnittger

Dear Ms. Jessica Bradley,

Unfortunately, I'm not available for this week to have a call with you and Ms. Winter from the Trial and Appeal Board. Why it is necessary to have an extension of the trial testimony period which start on August 15, 2015? and for all others deadlines?

And why do we need a conference call with Ms. Winter from the Trial and Appeal Board? Is this proposal an attempt to change the procedure of the trial and to get the "ACR" witch means what is intended as an alternative to a traditional Trademark Trial.

What exactly would we have to discuss on the phone? You talked about the options for presentation of evidence and testimony right? Plaintiffs (A&F) Pretrial Disclosures starts 7/30/2015 and Plaintiffs (A&F) 30-day Trail Period Ends 9/13/2015 right?

Do I have to be agree with your proposal and to have an extension of the deadlines? or to have a call with you and Ms. Winter yet? Sometimes I do not understand why A&F started the Opposition against the Red Dear Mark because do we have any likelihood of confusion? because confusion occurs when consumers believe that goods bering the junior mark (Red Dear) came from, or were sponsored by the senior mark holder A&F. I do have enough evidence that my Red Dear Mark has no similarity or a likelihood of confusion to A&F Moose Design Mark even both have an animals design (a Moose and a Deer witch come from the deer family). Do I have not the right in a Country like U.S.A with Democracy to have my own trademark because this a competition in a free market economy as long I don't have any likelihood of confusion because I used the same feature of a design or the same words. What is with the Sleek- craft factors? 13 factors right? What kind for factors do we share together? A&F and the Red Dear Mark use the same Class 025 one of the Sleekcraft factor right? and the another factors? Please let me know if is necessary to have a call to the Trial and Appeal Board with Ms. Winter in this case.

Note: America need Small Business because this is the only way to create jobs in the future. That are costumer of tomorrow.

For you and for me.

Kind Regards
 Isabella Schnittger

Red Dear Company

www.reddear.com

Ursprüngliche Mitteilung-----

Von: Jessica D Bradley <jbradley@JonesDay.com>

An: Isabella Schnittger <isartdesign7@aol.com>

Cc: myreddear <myreddear@aol.com>; Susan M Kayser <skayser@jonesday.com>

Verschickt: Di, 11 Aug 2015 10:16 am

Betreff: Re: A&F opposition adv. Ms. Schnittger

Dear Ms. Schnittger,

Given the upcoming trial testimony periods, we would like to set up a call with the Trademark Trial and Appeal Board interlocutory attorney, Ms. Winters, assigned to our case. The purpose of the call would be to discuss the parties' testimony periods and the options for presentation of evidence and testimony. Please let us know the times you are available Thursday or Friday this week, or anytime next week for a call and I will contact Ms. Winters to see when she is available on those days.

A&F's testimony period is currently scheduled to start on August 15, 2015. We propose a brief 30 day extension of this deadline and all other deadlines to allow us time to discuss procedures with Ms. Winters. The extension would include the start of your testimony period. As you know we have been communicating with you regarding options for the testimony and trial period since June 25, and the brief additional time will allow us time to set a call with Ms. Winters and reach a mutual agreement regarding the presentation of testimony and evidence that works for you and A&F.

Please let us know your response regarding a) all the times you have available for a call Thursday or Friday this week, or anytime next week for a call with Ms. Winters, and b) whether you will agree to a brief 30 day extension of all deadlines to allow us time to set a call with Ms. Winters and work out the method of presenting testimony and evidence.

Best regards,

Jessica

Jessica D. Bradley

Partner

[JONES DAY® - One Firm WorldwideSM](#)

51 Louisiana Avenue, NW

Washington DC 20001-2113

Office +1.202.879.7695

jbradley@jonesday.com

From: Isabella Schnittger <isartdesign7@aol.com>

To: jbradley@JonesDay.com,

Date: 07/27/2015 06:59 PM

Subject: Re: A&F opposition adv. Ms. Schnittger

Dear Ms. Jessica Bradley,

I am still thinking about this procedure because I believe this is not the right decision for me. I have found an article about the Summary Judgment and this is a part of it: A party (applying for summary judgment is attempting to avoid the time and expensive of a trial when the outcome is obvious . A party may also move for summary

judgment in order to eliminate the risk of losing a trial, and possibility avoid having to go through discovery(i.e. by moving at the outset of discovery), by demonstrating to the judge, via sworn statements and documentary evidence, that there are no material factual issues remaining to be tried. If there is nothing for the fact-finder to decide, then the moving party asks rhetorically, why have a trial? The moving party will also attempt to persuade the court that the undisputed material facts require judgment to be entered in its favor. In many jurisdictions, a party moving for summary judgment takes the risk that, although the judge may agree there are no material issues of fact remaining for trial, the judge may also find that it is the non-moving party that is entitled to judgment as a matter of law. However I am not a Trademark Attorney but I can read and maybe understand that I will take a risk when I will make the decision to use the Summary Judgment Brief.

I think A&F made the decision to get in Opposition against the Red Dear Mark Application. I have sent you enough evidence or facts to show that my Red Dear Applications has no similarity with the A&F Moose Design Mark. A&F's motive for the Opposition is I would inevitably capitalize upon the fame and distinctiveness of opposers's moose design. Fact is this is not true!

However I don't think this is a good idea to use the Summary Judgment Brief and to use this procedure.

Regards

Isabella Schnittger

-----Ursprüngliche Mitteilung-----

Von: Jessica D Bradley <jbradley@JonesDay.com>

An: Isabella Schnittger <isartdesign7@aol.com>

Cc: myreddear <myreddear@aol.com>; Susan M Kayser <skayser@jonesday.com>; Holly Lance <hlance@jonesday.com>

Verschickt: Mo, 27 Jul 2015 3:09 pm

Betreff: Re: A&F opposition adv. Ms. Schnittger

Dear Ms. Schnittger,

We agree with you that the case involves questions of fact. When using the ACR by Summary Judgment Briefs procedure, both sides agree that the Board can decide any questions of fact where the parties (here you and A&F) do not agree. The Board will consider all the facts and arguments together, so the process would be for us together to file one list of agreed stipulated facts (we can prepare a list for you to consider), and then each side can submit any additional facts it wishes the Board to consider together with any arguments.

Because A&F filed the opposition it has the first deadline to file a brief with its additional facts and arguments; then you would file a brief with any additional facts you propose and your arguments. You would also be able to respond to A&F's facts and argument. A&F then would be able to file a reply to your facts and arguments. After these filings are done, the Board would review all the filings and issue a decision.

Please let us know if you would like to proceed with this process.

Best regards,

Jessica

Jessica D. Bradley

Partner

[JONES DAY® - One Firm WorldwideSM](http://www.jonesday.com)

51 Louisiana Avenue, NW

Washington DC 20001-2113

Office +1.202.879.7695

jbradley@jonesday.com

From: Isabella Schnittger <isartdesign7@aol.com>

To: jbradley@JonesDay.com,

Date: 07/27/2015 09:44 AM
 Subject: Re: A&F opposition adv. Ms. Schnittger

Dear Ms. Jessica Bradley,

I would be pleased to find a way to shorten the resolution of Abercrombie & Fitch's opposition to my Red Dear trademark by stipulating to most of the facts involved. However, as I understand it, Summary Judgment is a method of disposing of a case when there are no questions of fact. To me, the issues in this case involve questions of fact: Would my Red Dear mark confuse potential customers by causing them to think that products with my mark were products of A&F.

I read the Moose Creek, Inc. v. Abercrombie & Fitch Co. case (331 F. Supp2d 1214 (2004) at p. 1227) own research by Google with interest:

"Plaintiffs [Moose Creek] argue that the picture of the moose is the dominant feature of their composite marks. Plaintiffs further argue that Abercrombie's moose logo, which depicts a silhouette moose, is very similar to the dominant moose in their composite marks, and therefore the two sets of marks are similar in appearance.

"This reasoning is analytically flawed for several reasons. First, it violates the anti-dissection rule. Although, as discussed above, a court may consider and give weight to the dominant features of a mark, in determining whether two marks are similar, the court must compare both marks in their entirety. [Citation omitted.] Therefore, although Plaintiffs are correct that Abercrombie's moose logo is somewhat similar in appearance to the picture of the moose contained in some of their composite marks, when comparing the two sets of marks in their entireties, the Court finds that they are very dissimilar. Most importantly Plaintiff's composite marks prominently feature the words "Moose Creek." That not only visually differentiates Plaintiffs' composite marks from Abercrombie's moose logo, but also clearly indicates to purchasers that Plaintiffs, not Abercrombie, are the source of the Moose Creek clothing line. Given that the majority of Plaintiffs' trademarks are composite marks, Plaintiffs' customers are likely to identify Plaintiffs' Moose Creek clothing line by a picture of a moose and the words "Moose Creek," not solely by a picture of a moose. This is especially true given that Abercrombie has provided evidence that substantial number of retailers use a picture of a moose (similar in appearance to Plaintiffs' moose) as either a logo or a decorative design on their clothing."

My mark is a deer, not a moose. Its seven point antlers are very distinct from moose antlers. The likelihood of confusion between those two is, I would think, a question of fact for the Board to determine. In addition, my mark is a "composite mark" in that it contains the words "Red Dear". Considering it in its entirety, I simply don't see any likelihood of confusion.

I have never argued that A&F's moose logo is not properly owned, registered and used by A&F. I concede it's distinctive, but as I see it, it's so distinct from a seven point stag with the words "Red Dear" that my mark won't hurt A&F's mark at all. And, A&F "provided evidence [in the Moose Creek case] that substantial number of retailers use a picture of a moose (similar in appearance to Plaintiffs' [and A&F's] moose) as either a logo or a decorative design on their clothing." That's relevant here, too. A friend has a tea towel she bought in Maine, which says "Maine" and has a picture of a moose.

Is there some way we can get the Board to rule on this central issue? Perhaps you would propose some stipulated facts, that do not include these central issues, and we could find a way to proceed.

Let me know.

Regards

Isabella Schnittger

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Isabella Schnittger

-----Ursprüngliche Mitteilung-----

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Verschickt: Mo, 13 Jul 2015 1:17 pm

Betreff: A&F opposition adv. Ms. Schnittger

Dear Ms. Schnittger,

We understand that you wish to proceed with the case based on the current trial deadlines in the Board's scheduling order. A&F can agree to that schedule. Accordingly, to keep the current trial testimony schedule, one method of proceeding with trial is ACR Using Summary Judgment Briefs. Attached is an excerpt from the Board manual regarding this method. We could use this method with deadlines similar to those in the Board's scheduling order so that you still have the same amount of time to respond to A&F.

Please let us know if you would like to discuss using this method, or to discuss other trial procedures with us, or the Board attorney Ms. Winters.

Best regards,

Jessica

Jessica D. Bradley

Partner

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